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WALL STREET JOURNAL  
4 April 1984

## Appeals Court Rules Against Death Penalty In California Spy Case

*Special to THE WALL STREET JOURNAL*  
SAN FRANCISCO — A federal appeals court here has ruled that the trial judge in an espionage case was "clearly erroneous" in holding that the charges provided for the possible imposition of the death penalty.

The appeals court agreed with the Justice Department and the attorney for the accused spy, James Durward Harper Jr., that a 1972 U.S. Supreme Court decision on a murder case from a Georgia state court rendered invalid the death penalty for almost every federal crime.

Judge Samuel Conti had ruled in Mr. Harper's case that capital punishment for acts of espionage "is not uniformly disproportionate to the severity of the offense, and is therefore not unconstitutional per se."

The appeals court said, however, that "the conclusion that the Constitution requires legislative guidelines in death penalty cases is inescapable. Its constitutionality cannot be saved by judicial formation of the

missing, but essential, statutory guidelines."

The court noted that the U.S. Senate recently passed a bill, supported by the Justice Department, that would authorize the death penalty for certain crimes, including espionage.

Mr. Harper, 49, a former consulting engineer from Mountain View, Calif., faces trial April 24 on charges of selling stolen high-technology U.S. defense secrets to Polish agents in 1980-1981. The information allegedly was given to Soviet agents. Mr. Harper allegedly received \$250,000 for the documents.